

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

AMYRIS, INC. *et al.*,¹

Debtors.

Chapter 11

Case No. 23-11131 (TMH)

(Jointly Administered)

Related Docket No: 601, 704, 807

**MICROSOFT’S RENEWED LIMITED OBJECTION TO DEBTORS’
POTENTIAL ASSUMPTION, ASSUMPTION AND ASSIGNMENT, OR
TRANSFER OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Microsoft Corporation, by and through its undersigned counsel, respectfully submits the following *Renewed Limited Objection to Debtors’ Potential Assumption, Assumption and Assignment, or Transfer of Executory Contracts and Unexpired Leases* (the “Renewed Objection”), and states as follows:

1. Microsoft and Debtor Amyris, Inc. are currently parties to: (1) Business and Services Agreement U6590933; (2) Master Agreement E7347040; and (3) Enrollments 46714457 and 67609689 (collectively, the “Licensing Agreements”). The Licensing Agreements are the contracts through which Amyris, Inc. obtains licenses to use Microsoft software and products. The Licensing Agreements are executory contracts for the non-exclusive license of intellectual property and payment of royalties of the type described by Section 365(n), and all payments due under the Licensing Agreements constitute royalties. *In re Prize Frize*, 32 F.3d 426 (9th Cir. 1994).

¹ A complete list of each of the Debtors in these Chapter 11 Cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://cases.stretto.com/Amyris>. The location of Debtor Amyris Inc.’s principal place of business and the Debtors’ service address in these Chapter 11 Cases is 5885 Hollis Street, Suite 100, Emeryville, CA 94608.

2. Enrollments 46714457 and 67609689 began on July 1, 2022, will reach the end of their three-year terms on June 30, 2025, and are payable in annual installments. Additionally, Azure Cloud services are invoiced monthly in arrears.

3. On October 19, 2023, Debtors filed the *Notice of Potential Assumption, Assumption and Assignment, or Transfer of Executory Contracts and Unexpired Leases* (Docket No. 601) (the “Notice”). The Notice included four (4) Microsoft contracts among those proposed for potential assumption, assumption and assignment, or transfer by the Debtors with the following cure amounts:

#	Counterparty Name	Debtor Party	Contract Title	Cure Amount
2525	Microsoft	Amyris, Inc.	Program Signature Form	\$207,987.49
2526	Microsoft Corporation	Amyris, Inc.	Microsoft Enterprise Services Work Order	\$0.00
2527	Microsoft Corporation	Amyris, Inc.	Purchase Order #10015175	\$0.00
2528	Microsoft Corporation	Amyris, Inc.	Non-Disclosure Agreement	\$0.00

(Docket No. 601-1, at page 58 of 96).

4. Although the Notice does not contain a complete list, Microsoft believed Debtors propose to assume, assume and assign, or transfer the Licensing Agreements. However, the proposed cure amount was incorrect because it omits **eight (8)** unpaid invoices due under the Licensing Agreements. All outstanding prepetition and post-petition invoices must be paid by the Debtor prior to assumption of the Licensing Agreements pursuant to 11 U.S.C. § 365(b)(1).

5. Therefore, on November 7, 2023, Microsoft filed its *Limited Objection to Notice of Potential Assumption, Assumption and Assignment, or Transfer of Executory Contracts and Unexpired Leases* (Docket No. 704) (the “Limited Objection”), stating that as of the date of the Limited Objection, the cure amount for the Licensing Agreements is **\$1,535,083.73**, as set forth below:

Ex.	Enrollment	Invoice	Date	Description	Amount Due
A	46714457	9882197362	6/28/23	Annual True-Up	\$144,569.60
B	46714457	9882197840	6/28/23	Annual True-Up	\$163.20
C	46714457	9882210057	7/1/23	Annual Invoice 7/2023 – 6/2024	\$244.80
D	46714457	9882214045	7/1/23	Annual Invoice 7/2023 – 6/2024	\$1,000,013.04
E	46714457	9882223228	7/1/23	Annual Invoice 7/2023 – 6/2024	\$201,317.40
F	67609689	9882214663	7/1/23	Annual Invoice 7/2023 – 6/2024	\$148,248.12
G	67609689	9882241940	7/10/23	June 2023 Azure Usage	\$19,835.73
H	67609689	9882321391	8/10/23	July 2023 Azure Usage	\$20,691.84
					\$1,535,083.73

6. The Limited Objection further stated that the Debtors’ continued usage of the Microsoft products and services provided under the Licensing Agreements may increase the cure amount based on the actual date of assumption and cure.

7. On December 1, 2023, Debtors filed the *First Supplemental Notice of Potential Assumption, Assumption and Assignment, or Transfer of Executory Contracts and Unexpired Leases* (Docket No. 807) (the “Supplemental Notice”), listing the same incorrect cure amount of \$207,987.49 for the Licensing Agreements (Docket No. 807-1 at 57 of 94).

8. Accordingly, Microsoft files this Renewed Objection to the Debtors’ assumption, assumption and assignment, or transfer of the Licensing Agreements because the Debtors mischaracterize the cure amount. As of this Renewed Objection, the cure amount for the Licensing Agreements remains **\$1,535,083.73** as set forth above.

9. Microsoft reserves the right to withdraw this Renewed Objection or revise the stated cure amount pending further investigation.

WHEREFORE, Microsoft objects and states the cure amount for the Licensing Agreements is at least **\$1,535,083.73**.

Dated: December 14, 2023

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 14, 2023, a true and correct copy of the foregoing MICROSOFT'S RENEWED LIMITED OBJECTION TO DEBTORS' NOTICE OF POTENTIAL ASSUMPTION, ASSUMPTION AND ASSIGNMENT, OR TRANSFER OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES was served via the Electronic Case Filing System for the United States Bankruptcy Court for the District of Delaware to all parties registered to receive such notice.

Also, the parties below were served via email:

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